



Manufacturers and Traders Trust Company, One M&T Plaza, Buffalo, New York 14203 PH 716 842-2366 FX 716 842-5376  
e-mail: mbriggs@mandtbank.com

MARISSA K. BRIGGS  
Vice President and Associate Counsel

August 6, 2004

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors  
Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

RE: Proposed Rule – Regulation DD – Overdraft/Bounce Protection Programs  
Docket Number R-1197

Dear Ms. Johnson:

Thank you for the opportunity to comment on the amendments that the Federal Reserve Board (the “Board”) proposes to Regulation DD (the “Proposed Regulations”) that would require financial institutions to provide additional information to consumers regarding overdraft protection services.

Manufacturers and Traders Trust Company supports the Board’s decision to treat overdraft protection services as adjuncts to deposit products subject to the Truth in Savings Act as opposed to credit products subject to the Truth in Lending Act and Regulation Z; however, we have a number of concerns about the specific terms of the Proposed Regulations and offer the following comments.

**I. Account Opening Disclosures:**

Proposed new comment 4(b)(4)-5 would require that banks disclose at account opening whether overdraft protection fees may be imposed in connection with checks, ATM withdrawals, or other electronic funds transfers. In general, we agree that customers should be informed that overdraft fees might be imposed as a result of a variety of types of transactions; however, we respectfully request that the proposed comment be modified to clarify that banks need not describe each possible transaction that could result in the imposition of an overdraft fee. Instead, we suggest that the comment authorize banks to satisfy this requirement by providing a non-exclusive list of such transactions. This would provide customers with sufficient descriptions to understand the types of transactions that may result in overdraft fees without forcing a bank to re-disclose this information if the bank adds a new type of transaction to its service offering in the future.

The Proposed Regulations do not address whether paragraph 4(b)(4)-5 of the official staff commentary applies to all accounts or only prospectively to accounts opened after the date on which it becomes effective. It would be costly and time consuming to provide new overdraft

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notices to all existing customers. Consequently, we respectfully request that the Proposed Regulations clarify that these new disclosures apply solely to accounts opened after the Proposed Regulations become effective in order to circumvent claims that existing disclosures are not sufficient.

Finally, as a technical matter we recommend that any new disclosure requirement be included in the text of the Proposed Regulations rather than in commentary. Important information should be prominently disclosed and we believe that readers are more apt to miss information that is contained only in the commentary.

#### **11. Periodic Statement Disclosures:**

Currently, if a bank provides periodic statements, it must include on such statements any fees or charges imposed during the period covered by the statement. Currently, banks must itemize fees by type, but fees of the same type may be aggregated or shown individually. The Proposed Regulations would expand this disclosure requirement so that a bank providing statements would also have to include the total amount of fees imposed for overdrafts and the total amount of fees for returned items for the statement period and for the calendar year.

As an initial matter, we request that the Board clarify what it means by the phrases “returned-item fees” as used in Section 230.6 and “fees for returning checks or other items unpaid” as used in the commentary to Section 230.6. Generally, banks refer to items that a customer deposits into his or her account but which are returned unpaid as “returned deposited items.” Banks generally charge fees for these returned deposited items. It is not clear whether the reference to “returned-item fees” in the Proposed Regulations is meant to refer to these “returned deposited items” or to checks that a customer writes on its account that the bank declines to pay under its overdraft service. In other words, it is not entirely clear whether the Board intends that a bank break down the fees that the bank charges for items that a customer writes against insufficient funds into two categories based upon whether or not the bank decides to pay an item under its overdraft service. We expect that it will be difficult for many banks to identify and separately list insufficient funds fees that it charges to a customer for items it paid and items it declined to pay through its overdraft service.

We respectfully request that the Board reconsider its proposal to require that statements reflect overdraft and returned item fees on an aggregate basis for both the statement period and year-to-date. We are particularly concerned by the year-to-date requirement. To our knowledge, this is not currently a common industry practice and would require significant and costly systems reprogramming for most banks. Typically, banks disclose at account opening all fees charged for checks written against insufficient funds, whether the banks pay or return those items. In addition, banks typically send separate notices to customers when a customer makes a transaction

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against insufficient funds. Typically, periodic statements also include the amount of such fees that the customer incurred during the statement period. These existing means of disclosure amply inform customers of the costs of overdraft services and provide customers with the information necessary to generate a cumulative annual total. Accordingly, it seems unnecessarily burdensome to require banks to undertake the sizable expenditure of time and funds necessary to make these changes in order to provide information to customers in yet another format.

Programming systems to provide year-to-date fee totals will likely be difficult because, in many cases, an account's service charge cycle will not coincide with a calendar month. For example, if an account cycles on the 15th of the month, a customer would have a service charge cycle that starts on December 15th and ends on January 14th of the following year. Because statement information is reported based on the activity within each cycle period, it may prove difficult and confusing to pull apart a monthly cycle that overlaps two different years so that the bank can report calendar year- to-date information. Also, for a statement covering a period that overlaps two calendar years (e.g., December 15 - January 14), it is not clear whether the report should show year-to-date totals for the calendar year that includes December or year-to-date totals for the calendar year that includes January. These complications are also likely to generate unnecessary customer confusion.

In addition, singling out these fees for heightened disclosure may also over-emphasize them in comparison to other fees (e.g., ATM usage fees, stop payment requests, etc.).

For all of the foregoing reasons, we recommend that the requirement to provide cumulative annual totals on periodic statements be eliminated in its entirety. In the alternative, we would suggest that this provision have limited application to those institutions that actively market overdraft protection programs, although as discussed below, we believe that the Board should clarify what it would consider to be an actively marketed program.

#### **111. Advertising:**

The Proposed Regulations would make a number of changes relating to the "advertising" of overdraft protection services. We are concerned that some of these changes are ambiguous and would ultimately discourage banks from providing information to customers rather than encouraging the dissemination of important information.

The Proposed Regulations seem to make a distinction between marketing overdraft protection services and disclosing information about such services; however, they do not articulate a workable definition of such terms. It appears that virtually any communication, including disclosures, would be treated as advertising.



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Under the Proposed Regulations banks must include specified information in any “announcement, solicitation, or advertisement promoting an automated overdraft service.” We are concerned that it is not clear what would or would not constitute “promoting” an overdraft service. We respectfully request that the Proposed Regulations be modified to clarify what is meant by “promoting” an overdraft service so that it is clear that neutral disclosure of the features and terms of such a service would not constitute promotion or advertising.

We also request that the Board clarify what it means by the term “automated overdraft service.” Virtually all banks in the United States make use of some type of automated system in determining whether to pay or not pay overdrafts in customer accounts. However, it appears that in referring to “automated overdraft services” the Board may be seeking to distinguish between the traditional discretionary overdraft services offered by banks and the “overdraft programs” that the Board believes tend to promote overdraft services in a way that encourages customers to overdraw their accounts. We believe that the additional disclosures required by section 230.8 (f) should not apply to the type of traditional discretionary services offered by banks even though banks may employ an automated computer program in the decision-making process.

With respect to the specific items that banks would have to disclose pursuant to section 230.8(f), we question the advisability of requiring banks to disclose “the circumstances under which the institution would not pay an overdraft.” We share the concerns of other banks that this may confuse customers and lead them to believe that if they avoid the circumstances listed, the bank will pay all overdrafts. This is not accurate and to convey such a message would be a disservice to customers. Instead, we suggest that any required disclosure emphasize the bank’s discretion in determining whether or not to pay an item.

Once again, we thank you for the opportunity to comment on the Proposed Regulations. Should you have any questions regarding our comments, please do not hesitate to contact Marissa Briggs (716-842-2366) or David Burstein (212-350-2580).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Marissa K. Briggs', written over a horizontal line.

Marissa K. Briggs